

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

In the Matter of )

Implementation of the Local )  
 Competition Provisions of the )  
 Telecommunications Act of 1996 )

CC Docket No. 96-98

Interconnection between Local )  
 Exchange Carriers and Commercial )  
 Mobile Radio Service Providers )

CC Docket 95-185

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FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

**COMMENTS OF WORLDCOM, INC.**  
**ON**  
**FURTHER NOTICE OF PROPOSED RULEMAKING**

On August 18, 1997, the Commission issued a *Further Notice of Proposed Rulemaking* ("*Further Notice*") in the above-captioned proceeding to address the question of whether certain unbundled network elements ("UNEs"), specifically dedicated or shared transport facilities in conjunction with unbundled switching, can be used by requesting carriers to originate and terminate interstate toll traffic to customers to whom the requesting carrier does not provide local exchange service. WorldCom, Inc. ("WorldCom") believes that this issue goes to the very heart of several of the fundamental principles underlying both the Telecommunications Act of 1996<sup>1</sup> and the Commission's *Local Competition Order*.<sup>2</sup>

<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act), codified at 47 U.S.C. §§ 151 *et seq.*

<sup>2</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Report and Order, CC Docket No. 96-98, 11 FCC Rcd 15499 (1996) (*Local Competition Order*), *Order on Reconsideration*, 11 FCC Rcd 13042 (1996), *Second Order on Reconsideration*, 11 FCC Rcd 19738 (1996), *Third Order on Reconsideration*, adopted and released August 18, 1997, *further recon. pending, aff'd in part and vacated in part sub. nom. CompTel v. FCC*, 11 F.3d 1068 (8th Cir. 1997) (*CompTel*), *aff'd in part and vacated in part sub. nom. Iowa Utilities Bd. v. FCC and consolidated cases*, No. 96-3321, *et al.*, 1997 WL 403401 (8th Cir., Jul

This would not even be an issue if not for the anticompetitive protestations of entrenched local exchange carriers, large and small. For that reason, WorldCom submits these comments strongly supporting the use of transport network elements for the transmission of access traffic.

## I. INTRODUCTION

The 1996 Act is plain and unambiguous: incumbent local exchange carriers ("LECs") must provide any unbundled network elements to any requesting telecommunications carrier for the provision of a telecommunications service.<sup>3</sup>

Interexchange carriers are telecommunications carriers, dedicated and shared transport facilities and tandem switching are network elements, and exchange access and interexchange services are telecommunications services. Therefore the 1996 Act clearly requires incumbent LECs to provide interexchange carriers with access to dedicated and shared transport facilities, and tandem switching, as unbundled network elements for the purpose of providing exchange access or interexchange service.

In interpreting section 251(c)(3) of the 1996 Act, the Commission determined that allowing interexchange carriers and other carriers to use unbundled elements to provide originating and terminating toll services is consistent with the purposes of the 1996 Act, stating that "Congress intended the 1996 Act to promote competition for not only telephone exchange services and exchange access services, but also for toll services."<sup>4</sup> In the *Access*

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18, 1997)(*Iowa Utilities Bd.*).

<sup>3</sup> 47 U.S.C. §251(c)(3).

<sup>4</sup> *Local Competition Order* at ¶361.

*Reform Order*, the Commission noted that "by giving competitors the right to lease an incumbent LEC's unbundled network elements at cost, Congress provided IXCs an alternative avenue to connect to and share the local network."<sup>5</sup>

Allowing interexchange carriers and competitive access providers to purchase dedicated and shared transport, and tandem switching, as unbundled network elements to provide exchange access and interexchange service will help to fulfill this Congressional vision. It will provide interexchange carriers with additional choices with respect to access transport providers, particularly in areas where there has not been competitive facility deployment or where there is no alternative to the incumbent's tandem switched transport. It will also maintain the choice of access transport provider in the hands of the interexchange carrier rather than placing the choice into the hands of an end user's local service provider that might otherwise have a monopoly over the transport of calls to and from its end users. Increased competition in the transport market will place downward pressure on access rates and will lead to lower long distance rates for consumers.

It is important that the Commission and all parties have a clear understanding of the unbundled network elements that will be used by interexchange carriers and others to provide exchange access and interexchange services. The potential for confusion is underscored by the question posed by the Commission in the further notice, "asking whether requesting carriers may use unbundled dedicated or shared transport facilities *in conjunction with unbundled switching*, to originate or terminate interstate toll traffic to customers to whom the

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<sup>5</sup> *Access Charge Order* at ¶32.

requesting carrier does not provide local exchange service."<sup>6</sup> It appears from the question that the Commission contemplates that interexchange carriers would purchase local switching from the incumbent LEC as an unbundled network element along with unbundled transport, dedicated or shared, in order to provide exchange access or interexchange services.

WorldCom's view is slightly, but significantly, different. In order to provide access transport services using unbundled network elements, interexchange carriers or competitive access providers are entitled to purchase dedicated transport facilities or shared transport facilities and tandem switching pursuant to interconnection agreements rather than through exchange access tariffs. Local switching, however, along with local loop transmission, would be purchased through exchange access tariffs or agreements from the provider of local service to the end user.<sup>7</sup> This is consistent with the practical limitations on the use of unbundled switching observed by the Commission in the *Order on Reconsideration*<sup>8</sup>, discussed in more detail below, and with the mandate contained in section 271 of the 1996 Act requiring that transport be unbundled from switching.<sup>9</sup>

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<sup>6</sup> *Further Notice* at ¶61.

<sup>7</sup> The local service provider will be the incumbent LEC or a competitor that is using unbundled local switching to provide local service to the end user.

<sup>8</sup> *Order on Reconsideration* at ¶¶10-14

<sup>9</sup> 47 U.S.C. §271(c)(2)(B)(v) and 47 U.S.C. §271(c)(2)(B)(vi).

## II. THE 1996 ACT CLEARLY PERMITS INTEREXCHANGE CARRIERS TO USE UNBUNDLED NETWORK ELEMENTS TO PROVIDE EXCHANGE ACCESS

The 1996 Act is absolutely clear on the question of whether an interexchange carrier can use unbundled network elements to itself and to others, even when the interexchange carrier is not also providing local service to the end user. Section 251(c)(3) of the Act states that an incumbent local exchange carrier has the "duty to provide, *to any requesting telecommunications carrier for the provision of a telecommunications service*, nondiscriminatory access to network elements . . ."<sup>10</sup>

In its *Local Competition Order*, the Commission correctly interpreted this to mean that "section 251(c)(3) permits *interexchange carriers* and all other requesting telecommunications carriers, to purchase unbundled elements *for the purpose of offering exchange access services, or for the purpose of providing exchange access services to themselves* in order to provide interexchange services to consumers."<sup>11</sup> The Commission explained that "section 251(c)(3) provides that requesting telecommunications carriers may seek access to unbundled elements to provide a 'telecommunications service,' and exchange access and interexchange services are telecommunications services."<sup>12</sup>

So firm was the Commission in its belief that unbundled network elements could be used by interexchange carriers and other requesting carriers to provide exchange access that it found that this interpretation was "compelled by the plain language of the 1996

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<sup>10</sup> 47 U.S.C. §251(c)(3) (emphasis added).

<sup>11</sup> *Local Competition Order* at ¶356 (emphasis added).

<sup>12</sup> *Id.*

Act" and that "there is no statutory basis upon which we could reach a different conclusion."<sup>13</sup>

The Commission adopted several rules to implement these principles. Section 51.307(c) of the Commission's rules thus provides that an incumbent LEC shall provide a requesting carrier with access to UNEs "in a manner that allows the requesting telecommunications carrier to provide *any telecommunications service* that can be offered by means of that network element."<sup>14</sup> The Commission's rules also prohibit an incumbent LEC from imposing "limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends."<sup>15</sup> Further, the rules explicitly state that a "*telecommunications carrier purchasing access to an unbundled network element may use such network element to provide exchange access services to itself in order to provide interexchange services to subscribers.*"<sup>16</sup>

Section 251(c)(3) of the 1996 Act, and the Commission's rules implementing that section, unambiguously permit an interexchange carrier to use unbundled network elements to provide exchange access service to itself. Dedicated and shared transport facilities, and tandem switching have been found by the Commission to be unbundled

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<sup>13</sup> *Id.*

<sup>14</sup> 47 C.F.R. §51.307(c)(emphasis added).

<sup>15</sup> 47 C.F.R. §51.309(a).

<sup>16</sup> 47 C.F.R. §51.309(b)(emphasis added).

network elements.<sup>17</sup> Therefore, it is clear that, pursuant to section 251(c)(3), an interexchange carrier may use dedicated and shared transport facilities, and tandem switching purchased from interconnection agreements to provide exchange access services to itself rather than purchasing such facilities from Part 69 access tariffs (and their intrastate equivalents). To paraphrase the Commission, there is no statutory basis upon which to reach a different conclusion.

**III. THE COMMISSION'S PRACTICAL OBSERVATIONS REGARDING THE USE OF THE UNBUNDLED LOOP ELEMENT IN THE LOCAL COMPETITION ORDER, AND THE USE OF THE UNBUNDLING SWITCHING ELEMENT IN THE ORDER ON RECONSIDERATION, DO NOT APPLY TO DEDICATED OR SHARED TRANSPORT FACILITIES OR TANDEM SWITCHING**

In reaching its interpretation of section 251(c)(3) and adopting rules to implement that section, the Commission recognized that

[C]arriers purchase exclusive use of unbundled loop elements, and thus, . . . as a practical matter, will have to provide whatever services are requested by the customers to whom those loops are dedicated. [If a] customer requests both local and long distance service, then any interexchange carrier purchasing access to that customer's loop will have to offer both local and long distance services. That is, interexchange carriers purchasing unbundled loops will most often not be able to provide solely interexchange services over those loops.<sup>18</sup>

Using a similar rationale in *Order on Reconsideration*, the Commission later found that, because the unbundled switching element includes the line card which is dedicated to a particular customer, "a carrier that purchases an unbundled switching element will not be

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<sup>17</sup> *Local Competition Order* at ¶425 (tandem switching) and ¶440 (interoffice facilities), clarified with respect to shared transport in *Third Order on Reconsideration*. See also 47 C.F.R. §51.319(c)(2) and §51.319(d)(1).

<sup>18</sup> *Local Competition Order* at ¶357.

able to provide solely interexchange service or solely access service to an interexchange carrier."<sup>19</sup>

With respect to both the unbundled loop element and the unbundled switching element, it is the dedicated nature of each -- *dedicated to individual end users* -- that imposes the practical limitation that makes it difficult to use those elements to provide exchange access.<sup>20</sup> In contrast, dedicated and shared transport, and tandem switching are *not* dedicated to a particular end user and so do not suffer from the same practical limitation. Dedicated transport facilities carry only the traffic of a particular interexchange carrier. Shared transport facilities, as the name implies, carry the traffic of many carriers, including that of the incumbent LEC.<sup>21</sup> The tandem switch routes traffic between switches and, unlike local switches, does not contain line cards dedicated to particular end users. Since neither transport facilities nor tandem switches are dedicated to individual end users, there is no reason, legal or practical, why these network elements cannot be used to provide only exchange access or interexchange services.

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<sup>19</sup> *Order on Reconsideration* at ¶13.

<sup>20</sup> It is important to note that the Commission did not *prohibit* the use of the unbundled loop or unbundled switching to provide only exchange access or interexchange services. It merely observed, for example, that "interexchange carriers purchasing unbundled loops will *most often* not be able to provide solely interexchange services over those loops." *Local Competition Order* at ¶357 (emphasis added). Thus, in an appropriate circumstance, an interexchange carrier could use such unbundled network elements to provide exchange access or interexchange services.

<sup>21</sup> *Third Order on Reconsideration* at ¶22.



**IV. THE USE OF UNBUNDLED NETWORK ELEMENTS TO PROVIDE EXCHANGE ACCESS OR INTEREXCHANGE SERVICES IS CONSISTENT WITH THE EIGHTH CIRCUIT'S RECENT DECISIONS**

In the *Third Order on Reconsideration* the Commission rejected ILEC contentions that shared transport was a bundled service rather than a network element.<sup>22</sup> Nonetheless, it can be anticipated that ILECs will argue here that dedicated and shared transport, and tandem switching, when used solely to provide exchange access or interexchange service, are exchange access services that must be purchased pursuant to Part 69 of the Commission's rules rather than as unbundled network elements pursuant to interconnection agreements.

The Eighth Circuit Court of Appeals squarely rejected this view in *Iowa Utilities Bd.* In addressing ILEC contentions that operator services, directory assistance, caller I.D., call forwarding, and call waiting are services that the incumbent LEC is not required to make available as unbundled network elements, the Court held that

Simply because these capabilities can be labeled as 'services' does not convince us that they were not intended to be unbundled as network elements . . . We agree with the FCC that such an interpretation would allow the incumbent LECs to evade a substantial portion of their unbundling obligation under subsection 251(c)(3).<sup>23</sup>

Therefore, the availability of exchange access as a service under Part 69 of the Commission's rules, does not in any way preclude unbundled transport and tandem switching from being made available as unbundled network elements and used by requesting carriers to provide exchange access and interexchange service.

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<sup>22</sup> *Third Order on Reconsideration* at ¶42.

<sup>23</sup> *Iowa Utility Bd.* at 133.

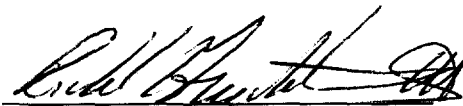
## V. CONCLUSION

The 1996 Act requires that incumbent LECs provide interexchange and other requesting carriers with dedicated and shared transport, and tandem switching, as unbundled network elements that can be use solely for the provision of exchange access or interexchange services. Such use of unbundled network elements is consistent with the Eighth Circuit Court of Appeals *Iowa Utility Bd.* decision. Finally, the use of dedicated and shared transport, and tandem switching, to provide exchange access and interexchange services will help to fulfill the Congressional goal of bringing more competition to all markets.

For the reasons set forth above, WorldCom urges the Commission to continue to allow interexchange and other carriers to use network elements to provide exchange access and interexchange services.

Respectfully submitted,


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Catherine R. Sloan  
Richard L. Fruchterman  
Richard S. Whitt  
WorldCom, Inc.  
1120 Connecticut Ave., N.W.  
Suite 400  
Washington, D.C. 20036  
202/776-1550

**CERTIFICATE OF SERVICE**

I, Cecelia Y. Johnson, hereby certify that on this 2nd day of October, 1997, true copies of the foregoing "COMMENTS OF WORLDCOM, INC. FURTHER NOTICE OF PROPOSED RULEMAKING" were hand delivered to each of the parties listed below.

  
Cecelia Y. Johnson

William F. Caton  
Acting Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554  
(original and six copies)

Janice M. Myles  
Common Carrier Bureau  
Room 544  
1919 M Street, N.W.  
Washington, D.C. 20544  
(two copies and diskette)

Richard Metzger  
Acting Chief, Common Carrier Bureau  
Federal Communications Commission  
Room 500, Mail Stop 1600  
1919 M Street, N.W.  
Washington, D.C. 20554

Kalpak Gude  
Common Carrier Bureau  
Room 544  
1919 M Street, N.W.  
Washington, D.C. 20544

Jake Jennings  
Common Carrier Bureau  
Room 544  
1919 M Street, N.W.  
Washington, D.C. 20544

WorldCom, Inc. October 2, 1997

Don Stockdale  
Common Carrier Bureau  
Room 544  
1919 M Street, N.W.  
Washington, D.C. 20544

International Transcription Service  
Room 140  
2100 M Street, N.W.  
Washington, D.C. 20037